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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91189418
Party	Defendant Phoenix 2008 LLC
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Date	11/02/2009
Attachments	PHOENIX RESPONSE_EXHIBIT C.pdf ( 48 pages )(2271143 bytes )

# **EXHIBIT C**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Application Serial Nos.:	77476098 77497086 77476107 77478035
Filed:	May 15, 2008 June 12, 2008 May 15, 2008 May 19, 2008
Marks:	SPEEDVISION SPEEDVISION SPEEDVISION HD SPEEDVISION (and Design)
Publication Date:	November 25, 2008 (for all opposed applications)

Speed Channel, Inc.

Opposer,

v.

Phoenix 2008 LLC,

Applicant.

Opposition No. 91189418

**APPLICANT'S FIRST SUPPLEMENTAL RESPONSE TO OPPOSER'S  
FIRST SET OF INTERROGATORIES**

Applicant Phoenix 2008 LLC ("Applicant") hereby submits its First Supplemental Response to Opposer Speed Channel, Inc.'s ("Opposer") First Set of Interrogatories ("Interrogatories"), originally served on June 4, 2009, pursuant to Fed. R. Civ. P. 26(e)(1) and the Trademark Trial and Appeal Board's ("Board") Manual of Procedure ("TBMP") § 408.03.<sup>1</sup>

<sup>1</sup> The current available version of TBMP § 408.03 (v. 2004) cites to Fed. R. Civ. P. 26(e)(2). That rule was revised in 2007, and the duty to supplement is now set forth under Rule 26(e)(1). However, the revisions did not materially or substantively change the duty to supplement under the Federal Rules of Civil Procedure.

## **GENERAL OBJECTIONS**

Applicant objects to Opposer's Interrogatories to the extent that such Interrogatories are not relevant to the claims asserted in this proceeding, or not calculated to lead to the discovery of admissible evidence.

Applicant objects to Opposer's Interrogatories to the extent that such Interrogatories relate to matters that are protected by the attorney-client privilege, the attorney work product privilege, or any other applicable privilege.

Applicant objects to Opposer's Interrogatories to the extent that such Interrogatories, including their definitions and instructions, seek to impose any obligation on Applicant beyond that required by the Federal Rules of Civil Procedure or the United States Patent and Trademark Office.

In supplementing its responses to these Interrogatories, Applicant does not waive any of the foregoing objections, or the specific objections set forth in the responses to particular Interrogatories. By making these supplemental responses, Applicant does not concede that its supplemental responses are relevant to this action or calculated to lead to the discovery of admissible evidence. Applicant expressly reserves the right to object to further discovery into the subject matter of these Interrogatories, to the introduction into evidence of any supplemental response or portion thereof, and to further supplement its response should further investigation disclose responsive information.

Applicant incorporates by reference the above General Objections into each of the supplemental responses below.

## **SPECIFIC OBJECTIONS AND RESPONSES**

### **INTERROGATORY NO. 1:**

**Set forth all reasons why Applicant selected Applicant's Marks.**

Applicant selected Applicant's Marks because all of the trademark or service mark registrations for "SPEEDVISION" formerly owned by Opposer were cancelled by the PTO for nonuse under Section 8 of the Trademark Act. These cancellations occurred over a span of more than four years without any attempt by Opposer to maintain these

registrations, constituting an express abandonment of any rights associated with these marks. Applicant, upon discovering that these cancelled marks were available for public use, applied for registration of Applicant's Marks. Applicant specifically selected the term SPEEDVISION due to its ability to uniquely symbolize motorsports and related goods and services.

**INTERROGATORY NO. 2:**

**Describe with specificity the derivation of Applicant's Marks.**

Applicant objects to Interrogatory No. 2 to the extent that it seeks information that is not relevant to the issues in this proceeding or reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects on the ground that the request is ambiguous as to the meaning and scope of "derivation" with respect to Applicant's Marks. Subject to, and without waiver of, this objection, there are no alternate forms of Applicant's Marks that Applicant considered for the Opposed Applications.

**INTERROGATORY NO. 3:**

**Set forth with specificity the reason for selecting the term "SPEEDVISION" as a term used in Applicant's Marks.**

Applicant objects to Interrogatory No. 3 to the extent that it seeks information that is not relevant to the issues in this proceeding or reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiver of, this objection, see response to Interrogatory Nos. 1 and 2.

**INTERROGATORY NO. 4:**

**State whether Applicant, or any entity acting for Applicant, is currently selling goods or providing services described in the Opposed Applications under the marks that are the subject of the Opposed Applications in the United States and, if so, fully describe the first sale of such goods or services.**

Applicant is not currently selling any goods or providing any services described in the Opposed Applications under the marks that are the subject of the Opposed Applications in the United States, nor has Applicant ever sold such goods or provided such services.

**INTERROGATORY NO. 5:**

**Set forth all facts to support the claim that at the time Applicant filed the Opposed Applications, Applicant had a *bona fide* intent to use the marks identified in each of the Opposed Applications on each of the goods and services identified therein.**

Applicant objects to Interrogatory No. 5 to the extent that it seeks information that is not relevant to the issues in this proceeding or reasonably calculated to lead to the discovery

of admissible evidence. Subject to, and without waiver of, this objection, the Opposed Applications were filed on an intent-to-use basis pursuant to 15 U.S.C. §1051(b), which includes a sworn statement of a *bona fide* intention to use the mark in commerce, which represents evidence of a good faith intention to use Applicant's Marks. Accordingly, at the time of filing the Opposed Applications, Applicant had a *bona fide* intent to use the marks identified in each of the Opposed Applications on each of the goods and services identified therein, and still has a *bona fide* intent to use such marks on such goods and services. In addition, since approximately January 2008, Applicant or Applicant's sole member explored the possibility of producing and distributing television programming related to automobiles, and motorsports in general, with the potential of utilizing Applicant's Marks on such goods or services subject to Applicant's permissible use of such marks.

**INTERROGATORY NO. 6:**

**Identify all third party marks (whether registered or not) of which You are aware that include the word element SPEED for goods or services in International Classes 38, 41, or either of them, within the United States.**

Applicant objects to Interrogatory No. 6 to the extent that the request seeks information that is publicly available from the PTO. Applicant further objects to the extent that the request seeks information protected by the attorney-client privilege and/or the attorney work-product doctrine.

**INTERROGATORY NO. 7:**

**Describe in detail all uses that You made or make of the term SPEEDVISION or any marks that include the word element SPEEDVISION in connection with any goods in International Classes 38, 41, or either of them, within the United States.**

Applicant is not currently using, nor has it ever used, the term SPEEDVISION or any marks that include the word element SPEEDVISION in connection with any goods in International Classes 38, 41, or either of them, within the United States.

**INTERROGATORY NO. 8:**

**Identify (a) the persons who created and selected Applicant's Marks, and (b) the current employee of Applicant with the greatest knowledge concerning the selection of Applicant's Marks.**

For subparts (a) and (b):

Roger Williams  
Phoenix 2008 LLC  
114 Ferris Hill Rd.  
New Canaan, CT 06840

(203) 972-6447

**INTERROGATORY NO. 9:**

**Fully describe each good offered or to be offered and each service provided or to be provided under Applicant's Marks within the United States.**

Applicant does not currently offer any good or provide any service under Applicant's Marks within the United States. Accordingly, Applicant has not yet identified a specific good or specific service to be provided under Applicant's Marks within the United States. In general, it is Applicant's intention to offer the following goods and provide the following services under Applicant's Marks within the United States:

For Application Serial No. 77497086,

Publications, namely, newsletters, magazines, and journals in the fields of automobiles, airplanes, motorcycles, boats, and other modes of transportation

For Application Serial No. 77478035

Shirts; Pants; Jackets; Footwear; Hats; Headwear; Sweat shirts; Coats; Gloves

Cable television broadcasting; Radio and television broadcasting services; Audio and video broadcasting services over the Internet

Entertainment services, namely, an on-going series featuring automobiles, airplanes, motorcycles, boats, and other modes of transportation provided through television broadcasts, cable and satellite television, radio broadcasts, mobile communications devices, wireless networks, and global computer networks; Entertainment services, namely, production of CDs, DVDs, videotapes, and pre-recorded digital media featuring an on-going series featuring automobiles, airplanes, motorcycles, boats, and other modes of transportation; Production of cable television programs

For Application Serial No. 77476107

Cable television broadcasting; Radio and television broadcasting services; Audio and video broadcasting services over the Internet

Entertainment services, namely, an on-going series featuring automobiles, airplanes, motorcycles, boats, and other modes of transportation provided through television broadcasts, cable and satellite television, radio broadcasts, mobile communications devices, wireless networks, and global computer networks; Entertainment services, namely, production of CDs, DVDs, videotapes, and pre-recorded digital media featuring an on-going series featuring automobiles,

airplanes, motorcycles, boats, and other modes of transportation; Production of cable television programs

For Application Serial No. 77476098

Cable television broadcasting; Audio and video broadcasting services over the Internet; Radio and television broadcasting services

Entertainment services, namely, an on-going series featuring automobiles, airplanes, motorcycles, boats, and other modes of transportation provided through television broadcasts, cable and satellite television, radio broadcasts, mobile communications devices, wireless networks, and global computer networks; Entertainment services, namely, production of CDs, DVDs, videotapes, and pre-recorded digital media featuring an on-going series featuring automobiles, airplanes, motorcycles, boats, and other modes of transportation; Production of cable television programs

**INTERROGATORY NO. 10:**

**Fully describe the trade channels for each good offered or to be offered and service provided or to be provided under Applicant's Mark within the United States.**

Applicant does not currently offer any good or provide any service under Applicant's Marks within the United States, and has not yet identified a specific good or specific service to be provided under Applicant's Marks within the United States. Accordingly, Applicant has not yet determined specific trade channels for each good or service that it may offer under Applicant's Marks in the United States. In general, it is Applicant's intention to offer its goods and/or provide its services in the following trade channels:

For entertainment and cable television services: television, radio, internet, CDs, DVDs, videotapes, and other pre-recorded digital media.

For publications: internet, retail outlets that sell publications; mail subscriptions.

For clothing: internet, retail outlets that sell clothing.

**INTERROGATORY NO. 11:**

**Fully describe the intended consumer for each good offered or to be offered and service provided or to be provided under Applicant's Mark within the United States.**

Applicant does not currently offer any good or provide any service under Applicant's Marks within the United States, and has not yet identified a specific good or specific service to be provided under Applicant's Marks within the United States. Accordingly, Applicant has not yet determined specific consumers for each good or service it may offer under Applicant's Marks in the United States. In general, it is Applicant's intention



to offer its goods and/or provide its services to consumers with interests in automobiles, and motorsports in general.

**INTERROGATORY NO. 12:**

**Fully describe the source of all revenues that Applicant expects to receive from each good offered or to be offered and service provided or to be provided under Applicant's Marks within the United States.**

Applicant does not currently offer any good or provide any service under Applicant's Marks within the United States, and has not yet identified a specific good or specific service to be provided under Applicant's Marks within the United States. Accordingly, Applicant cannot identify any specific source of revenue that Applicant expects to receive from each good offered or to be offered or service provided or to be provided under Applicant's Marks within the United States. In general, it is Applicant's expectation that it will derive revenue for Applicant's goods or services from:

For entertainment and cable television services: television, radio and internet advertisements; sale of CDs, DVDs, videotapes, and other pre-recorded digital media.

For publications: sale of publications at retail outlets, mail subscriptions and Internet sales.

For clothing: sale of clothing at retail outlets and Internet sales.

**INTERROGATORY NO. 13:**

**Identify any good offered or to be offered and service provided or to be provided under Applicant's Marks that are not identified in the Opposed Applications.**

Applicant objects to Interrogatory No. 13 to the extent that it seeks information that is not relevant to the issues in this proceeding or reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiver of, this objection, Applicant is not currently offering any good or providing any service, and presently does not intend to offer any good, or provide any service, under Applicant's Marks that is not identified in the Opposed Applications.

**INTERROGATORY NO. 14:**

**Identify all third-parties (including advertising agencies, public relations agencies or market research agencies) that Applicant has communicated with concerning the advertising, marketing, promoting or publicizing of goods or services to be sold or provided within the United States under Applicant's Marks, whether or not such third-parties are located within the United States.**

Applicant has not communicated with any third-party concerning the advertising, marketing, promoting or publicizing of goods or services to be sold or provided within the United States under Applicant's Marks.

#### **SUPPLEMENTAL RESPONSE**

Applicant communicated with a third-party concerning the manufacturing of goods to be sold within the United States under Applicant's Marks. Sometime in late 2008, Applicant or Applicant's sole member discussed the manufacturing of goods bearing Applicant's Marks. As a result of that discussion, about a few weeks later, Applicant was provided with a sample of one of Applicant's Marks as it may be used or used on goods or in connection with services to be sold in the United States.

#### **INTERROGATORY NO. 15:**

**Describe any information requested, conducted or received by or on behalf of Applicant concerning Applicant's Marks or the Speed Marks, or goods or services offered under any such marks, including but not limited to market research relating to any likelihood of or actual confusion between the parties' respective marks.**

Applicant objects to Interrogatory No. 15 to the extent that it seeks information protected by the attorney-client privilege and/or the attorney work-product doctrine, and to the extent that the request for "information ... conducted" is incomprehensible. Subject to, and without waiver of, this objection, Applicant or Applicant's sole member has inquired and/or received information indicating that Speedvision Network changed to Speed Channel on or about February 2002, and that the previously registered SPEEDVISION marks became available upon cancellation by the PTO. Applicant also learned that several employees of Opposer, or one of its affiliates (including Fox), including David Hill, the current Chairman and CEO of Fox Sports, were involved with researching, investigating and instituting the discontinued use of SPEEDVISION and the use of SPEED to describe Opposer's goods and services following Opposer's acquisition of Speedvision Network.

#### **INTERROGATORY NO. 16:**

**Identify all channels in which Applicant advertises or intends to advertise goods and services under Applicant's Marks within the United States.**

Applicant does not currently offer any good or provide any service under Applicant's Marks within the United States, and has not yet identified a specific good or specific service to be provided under Applicant's Marks within the United States. Accordingly, Applicant cannot state specific channels in which Applicant advertises or intends to advertise its goods or services under Applicant's Marks within the United States. In general, it is Applicant's intention to advertise its goods and services through common advertising media, including but not limited to television, radio, print publications, and the Internet.

**INTERROGATORY NO. 17:**

**Describe in detail all facts and evidence to support Applicant's denial of any allegation in Speed's Notice of Opposition, with reference to the specific allegation(s) to which the facts and evidence relate.**

Applicant objects to Interrogatory No. 17 to the extent that it seeks information protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, this objection, Applicant states that there is no likelihood of confusion between Applicant's Marks and Opposer's SPEED marks, and that Opposer has no rights in SPEEDVISION due to its non-use of such marks, its abandonment of such marks, and the cancellation of such marks by the PTO. Applicant is also aware that, in as early as 1999, Opposer, or one of its affiliates (including Fox), had planned to abandon the SPEEDVISION mark. See also Applicant's response to Interrogatory No. 15.

**INTERROGATORY NO. 18:**

**Describe in detail all facts and evidence to support Applicant's Affirmative Defenses to Speed's Notice of Opposition, with reference to the specific Affirmative Defense(s) to which the facts and evidence relate.**

Applicant objects to Interrogatory No. 18 to the extent that it seeks information protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, this objection, Applicant states as follows:

<b>Affirmative Defense</b>	<b>Basis for Defense</b>
Failure to State a Claim	Opposer has failed to state a valid claim because Opposer has abandoned all rights to SPEEDVISION and there is no likelihood of confusion between Applicant's Marks and Opposer's SPEED marks.
Abandonment	Opposer has no rights to SPEEDVISION due to Opposer's non-use of such marks, its abandonment of such marks and the cancellation of such marks by the PTO.
Doctrine of Unclean Hands	Applicant asserts the doctrine of unclean hands based on Opposer's attempt to claim rights to SPEEDVISION after Opposer's non-use of such marks, its abandonment of such marks and the cancellation of such marks by the PTO, in addition to Opposer's attempt to assert rights in its Opposition that Opposer no longer has.
Doctrine of Estoppel	Applicant is estopped from claiming any right to SPEEDVISION due to its non-use of such marks, its abandonment of such marks and the cancellation of such marks by the PTO, and from making any claim in its Opposition to rights that Opposer no longer has.
Doctrine of Bad	Applicant asserts the doctrine of bad faith based on Opposer's attempt to

Faith	claim rights to SPEEDVISION due to Opposer's non-use of such marks, its abandonment of such marks and the cancellation of such marks by the PTO, as well as Opposer's attempt to assert rights in its Opposition that Opposer no longer has.
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Applicant is also aware that, in as early as 1999, Opposer, or one of its affiliates (including Fox), had planned to abandon the SPEEDVISION mark. See also Applicant's response to Interrogatory No. 15. See also Applicant's response to Interrogatory No. 15. Applicant reserves the right to supplement or amend its response to this Request subject to Applicant's further investigation of this matter.

**INTERROGATORY NO. 19:**

**To the extent You are relying upon third party marks in support of Applicant's denial of any of the allegations in Speed's Notice of Opposition, identify each third party mark and for each identify the owner, the goods, the annual sales of goods under the mark, and evidence of consumer recognition of the mark.**

Applicant objects to Interrogatory No. 19 to the extent that it seeks information that is publicly available from the USPTO. Applicant further objects to the extent that it seeks information protected by the attorney-client privilege and/or the attorney work-product doctrine. Applicant further objects to the extent that the request is overly broad and unduly burdensome. Subject to, and without waiver of, this objection, the following Speedvision marks (all previously owned by Speed Channel, Inc.) were abandoned by Opposer and cancelled by the PTO for nonuse under Section 8 of the Trademark Act:

Speedvision (Registration No. 2049276) (cancelled)  
Speedvision Network (Registration No. 2067548) (cancelled)  
Speedvision (and design) (Registration No. 2140153) (cancelled)  
Speedvision News Raceweek (and design) (Registration No. 2433636) (cancelled)  
Speedvision GT Championship (Registration No. 2451685) (cancelled)  
Speedvision World Challenge (Registration No. 2453681) (cancelled)  
Speedvision Touring Car Championship (Registration No. 2453772) (cancelled)  
Speedvision.com (Registration No. 2464221) (cancelled)

**INTERROGATORY NO. 20:**

**Identify each of Applicant's officers, managers and members.**

Roger Williams  
Phoenix 2008 LLC  
114 Ferris Hill Rd.  
New Canaan, CT 06840  
(203) 972-6447

**INTERROGATORY NO. 21:**

**If You contend that there is no likelihood of confusion between the Speed Marks and Applicant's Marks, describe in detail the basis for Your contention.**

Applicant objects to Interrogatory No. 21 to the extent that it seeks information protected by the attorney-client privilege and/or the attorney work-product doctrine. Applicant further objects on the ground that the interrogatory seeks a conclusion of law regarding "likelihood of confusion." Subject to, and without waiver of, this objection, the word "speed" is highly suggestive or descriptive of Opposer's goods and services, thus warranting a very narrow scope of protection under U.S. trademark law. In fact, the U.S. Trademark Office database reveals many registrations and applications incorporating the word "speed" for numerous goods and services. Opposer's attempt to claim exclusive rights to a word that is commonly associated with and describes a feature of automobiles, and motorsports in general, contravenes trademark law and policy. Even if it were true that Opposer's Speed Marks have acquired some degree of fame, this does not afford Opposer absolute rights to that word, especially when used as one syllable of a non-confusingly similar multi-syllabic term. SPEEDVISION is sufficiently different from SPEED in terms of sight, sound and connotation to avoid confusion, particularly since the word "speed" is in common usage as a trademark and descriptive term, and when it is used in a highly suggestive or descriptive manner.

**INTERROGATORY NO. 22:**

**Identify all documents that support or contravene Your answer to Interrogatory No. 21.**

Applicant objects to Interrogatory No. 22 to the extent that it seeks information protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, this objection, Opposer is already in possession of Applicant's April 3, 2009 letter to Daniel E. Bruso, Esq., counsel for Opposer, in response to Opposer's March 25, 2009 letter to Brian J. Hurh, Esq., counsel for Applicant.

**SUPPLEMENTAL RESPONSE**

Subject to, and without waiver of the foregoing objection, Opposer is also in possession of certain documents and things, produced as part of Applicant's First Supplemental Response to Opposer's Request for Documents, that may relate to this Interrogatory.

**INTERROGATORY NO. 23:**

**Describe in detail any instances of which you are aware in which any person has referred to Opposer, or Opposer's goods and services, using the term "SPEEDVISION," from December 4, 2004, through and including the date that Applicant responds to these Interrogatories.**

Applicant is not aware of any instance in which any person has referred to Opposer, or Opposer's goods and services, using the term "SPEEDVISION," from December 4, 2004, through and including the date of Applicant's response to these Interrogatories.

**INTERROGATORY NO. 24:**

**Describe how Applicant complied with its obligations to preserve all Documents, including but not limited to electronically stored information, relevant to the issues in this case, including by identifying all steps taken and the dates such steps were taken.**

Upon receiving notice of Opposer's request for an extension of time to file a Notice of Opposition against the Opposed Applications, Applicant has made all reasonable efforts to preserve any potentially relevant documents.

**INTERROGATORY NO. 25:**

**Identify the persons with the most knowledge about the substance of the Answers to Opposer's First Set of Interrogatories.**

Roger Williams  
Phoenix 2008 LLC  
114 Ferris Hill Rd.  
New Canaan, CT 06840  
(203) 972-6447

**INTERROGATORY NO. 26**

**Identify all persons who provided information or documents relating to Applicant's Answers to Opposer's First Set of Interrogatories.**

Roger Williams  
Phoenix 2008 LLC  
114 Ferris Hill Rd.  
New Canaan, CT 06840  
(203) 972-6447

**INTERROGATORY NO. 27:**

**Identify the specific person(s) who participated in the decision to file the Opposed Applications and their role.**

Roger Williams  
Phoenix 2008 LLC  
114 Ferris Hill Rd.  
New Canaan, CT 06840  
(203) 972-6447

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

PHOENIX 2008 LLC

By: 

Roger Williams  
Phoenix 2008 LLC  
114 Ferris Hill Rd.  
New Canaan, CT 06840  
(203) 972-6447

November 2, 2009

As to all objections

By: 

Brian J. Hurh

DAVIS WRIGHT TREMAINE LLP  
1919 Pennsylvania Ave. NW  
Washington, DC 20006  
(202) 973-4200


Counsel for Phoenix 2008 LLC

November 2, 2009

**CERTIFICATE OF SERVICE**

I do hereby certify that a copy of the foregoing "Applicant's Supplemental Response to Opposer's First Set of Interrogatories" was sent via first class mail, postage prepaid, this 2nd day of November, 2009 to the following:

Daniel E. Bruso, Esq.  
Cantor Colburn LLP  
20 Church Street, 22<sup>nd</sup> Floor  
Hartford, CT 06103-3207



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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Application Serial Nos.:	77476098 77497086 77476107 77478035
Filed:	May 15, 2008 June 12, 2008 May 15, 2008 May 19, 2008
Marks:	SPEEDVISION SPEEDVISION SPEEDVISION HD SPEEDVISION (and Design)
Publication Date:	November 25, 2008 (for all opposed applications)

Speed Channel, Inc.

Opposer,

v.

Phoenix 2008 LLC,

Applicant.

Opposition No. 91189418

**LOG OF PRIVILEGED DOCUMENTS  
WITHHELD FROM PRODUCTION BY  
PHOENIX 2008 LLC**

The following is a list of the documents withheld by Applicant Phoenix 2008 LLC (“Phoenix”) from production in response to Rule 26(a)(1) based on attorney-client privilege, attorney work-product, or other applicable privilege, as identified in the log.

**Privileged Documents Withheld**

The following documents were withheld on the basis of privilege:

Bates Nos.	Date	From	To	Description of Document	Privilege
PHX_001	4/7/2008	Brian Hurh	Roger Williams	Email re: applications for Applicant's Marks	Atty/Client
PHX_002	4/8/2008	Roger Williams	Brian Hurh	Email re: applications for Applicant's Marks	Atty/Client
PHX_003	4/8/2008	Brian Hurh	Burt Braverman / David Silverman	Email re: applications for Applicant's Marks	Atty/Client
PHX_004	4/9/2008	Brian Hurh	Roger Williams	Email re: applications for Applicant's Marks w/ attached summary of research	Atty/Client
PHX_005	4/14/2008	Brian Hurh	Burt Braverman	Email re: applications for Applicant's Marks w/ attached summary of research	Atty/Client
PHX_006	5/12/2008	Brian Hurh	Roger Williams	Email re: applications for Applicant's Marks w/ attached summary of research	Atty/Client
PHX_007- PHX_008	5/12/2008	Brian Hurh / Burt Braverman	Burt Braverman / Brian Hurh	Email exchange re: applications for Applicant's Marks	Atty/Client
PHX_009	5/12/2008	Burt Braverman	Brian Hurh	Email re: applications for Applicant's Marks	Atty/Client
PHX_010- PHX_014	5/15/2008	Brian Hurh / Roger Williams	Roger Williams / Brian Hurh	Email exchange re: applications for Applicant's Marks w/ attached draft applications	Atty/Client
PHX_015	5/19/2008	Brian Hurh	Roger Williams	Email re: applications for Applicant's Marks	Atty/Client
PHX_016- PHX_017	6/12/2008	Roger Williams / Brian Hurh	Brian Hurh / Roger Williams	Email exchange re: applications for Applicant's Marks	Atty/Client
PHX_018	9/8/2008	Brian Hurh	Roger Williams	Email re: office actions to applications for Applicant's Marks	Atty/Client
PHX_019	9/11/2008	Brian Hurh	Roger Williams	Email re: office actions to applications for Applicant's Marks	Atty/Client
PHX_020	9/16/2008	Brian Hurh	Burt Braverman	Email re: office actions to applications for Applicant's Marks	Atty/Client
PHX_021	9/26/2008	Brian Hurh	Roger Williams	Email re: office actions to applications for Applicant's Marks	Atty/Client
PHX_022 PHX_023	10/6/2008	Brian Hurh / Roger Williams	Roger Williams / Brian Hurh	Email exchange re: office actions to applications for Applicant's Marks	Atty/Client
PHX_024	10/24/2008	Sharon Mathis	Brian Hurh	Email re: publication of Applicant's Marks for opposition	Atty/Client
PHX_025	11/26/2008	Sharon Mathis	Brian Hurh	Email re: publication of	Atty/Client

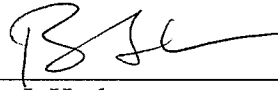
Bates Nos.	Date	From	To	Description of Document	Privilege
				Applicant's Marks for opposition	
PHX_026	11/26/2008	Brian Hurh	Roger Williams	Email re: publication of Applicant's Marks for opposition	Atty/Client
PHX_027	12/22/2008	Brian Hurh	Roger Williams	Email re: applications for Applicant's Marks	Atty/Client
PHX_028- PHX_029	12/30/2008	Brian Hurh / Roger Williams	Roger Williams / Brian Hurh	Email exchange re: Fox request for extension to file notice of opposition	Work Product Atty/Client
PHX_030	12/30/2008	Brian Hurh	Burt Braverman	Email exchange re: Fox request for extension to file notice of opposition	Work Product
PHX_031	3/4/2009	Roger Williams	Brian Hurh	Email re: opposition to applications for Applicant's Marks	Atty/Client
PHX_032- PHX_033	3/5/2009	Brian Hurh / Roger Williams	Roger Williams / Brian Hurh	Email exchange re: opposition to applications for Applicant's Marks	Work Product Atty/Client
PHX_34	3/5/2009	Brian Hurh	Burt Braverman	Email re: applications for Applicant's Marks	Work Product
PHX_35	3/19/2009	Brian Hurh	Burt Braverman	Email re: Speed Channel notice of opposition	Work Product
PHX_036- PHX_037	3/25/2009	Roger Williams / Brian Hurh	Brian Hurh / Roger Williams / Burt Braverman	Email exchange re: Speed Channel notice of opposition	Work Product Atty/Client
PHX_038	3/25/2009	Brian Hurh	Roger Williams	Email re: Speed Channel's Notice of Opposition and Cease and Desist Letter	Work Product
PHX_039	3/25/2009	Brian Hurh	Burt Braverman / David Silverman	Email re: Speed Channel's Notice of Opposition and Cease and Desist Letter	Work Product
PHX_040- PHX_041	4/1/2009	Burt Braverman / David Silverman	Brian Hurh / David Silverman	Email exchange re: response to Speed Channel cease and desist letter w/ attached draft response letter	Work Product
PHX_042- PHX_043	4/3/2009	Brian Hurh	David Silverman / Burt Braverman	Email re: response to Speed Channel cease and desist letter w/ attached draft response letter	Work Product Atty/Client
PHX_044	4/3/2009	Brian Hurh	Roger Williams	Email re: response to Speed Channel cease and desist letter	Work Product
PHX_045	4/4/2009	Roger Williams	Brian Hurh / Burt Braverman	Email re: response to Speed Channel cease and desist letter	Atty/Client
PHX_046	4/15/2009	Brian Hurh	Roger Williams / Burt Braverman	Email re: discussion with D. Bruso about Speed Channel opposition	Work Product Atty/Client
PHX_047	4/21/2009	Brian Hurh	Roger Williams /	Email re: discussion with	Work Product

Bates Nos.	Date	From	To	Description of Document	Privilege
			Burt Braverman / David Silverman	D. Bruso about Speed Channel opposition	Atty/Client
PHX_048- PHX_050	4/22/2009	Burt Braverman / David Silverman	Brian Hurh / Roger Williams / David Silverman / Burt Braverman	Email exchange re: Applicant's answer to Speed Channel opposition	Work Product
PHX_051- PHX_052	4/22/2009	Burt Braverman / Brian Hurh	Brian Hurh / Burt Braverman	Email exchange re: Applicant's answer to Speed Channel opposition	Work Product
PHX_053- PHX_054	4/23/2009	Burt Braverman / David Silverman	Brian Hurh / Roger Williams / David Silverman / Burt Braverman	Email exchange re: Applicant's answer to Speed Channel opposition	Work Product
PHX_055	4/27/2009		DWT	Summary of Speed Channel opposition proceedings	Work Product
PHX_056	4/28/2009	Brian Hurh	Burt Braverman / David Silverman	Email re: Applicant's answer to Speed Channel opposition w/ attached draft answer	Work Product
PHX_057	4/28/2009	Brian Hurh	Burt Braverman / David Silverman	Email re: Speed Channel w/ attached summary of research	Work Product
PHX_058- PHX_060	4/29/2009	Burt Braverman / David Silverman	Brian Hurh / Burt Braverman / David Silverman	Email exchange re: Applicant's answer to Speed Channel Opposition	Work Product
PHX_061- PHX_063	4/30/2009	Burt Braverman / David Silverman / Brian Hurh	David Silverman / Brian Hurh / Burt Braverman	Email exchange re: Applicant's answer to Speed Channel Opposition	Work Product
PHX_064- PHX_068	5/4/2009	Brian Hurh / David Silverman / Burt Braverman	Burt Braverman / David Silverman / Brian Hurh	Email exchange re: Applicant's answer to Speed Channel opposition w/ attached unexecuted draft answer	Work Product Atty/Client
PHX_069- PHX_071	5/19/2009	Sharon Mathis / Brian Hurh /	Brian Hurh / David Silverman / Burt Braverman / Sharon Mathis	Email re: Speed applications for Speed mark	Work Product
PHX_072- PHX_073	5/19/2009	Burt Braverman / Brian Hurh	Brian Hurh / David Silverman / Burt Braverman	Email re: applications for Applicant's Marks	Work Product
PHX_074	5/21/2009	Burt Braverman	Brian Hurh	Email re: Speed Channel	Atty/Client
PHX_075	5/26/2009	Brian Hurh	Roger Williams / Burt Braverman / David Silverman	Email re: discovery conference with D. Bruso	Work Product
PHX_076	6/2/2009	Brian Hurh	Burt Braverman / David Silverman	Email re: Applicant's response to Speed Channel discovery w/ attached draft response	Work Product
PHX_077	6/3/2009	Brian Hurh	Burt Braverman /	Email re: Applicant's	Work Product

Bates Nos.	Date	From	To	Description of Document	Privilege
			Daniel Reing	response to Speed Channel discovery w/ attached draft response	
PHX_078	6/10/2009	Brian Hurh	Burt Braverman	Email re: Applicant's response to Speed Channel discovery w/ attached draft response	Work Product
PHX_079- PHX_080	6/18/2009	Brian Hurh / David Silverman	David Silverman / Brian Hurh	Email exchange re: Applicant's response to Speed Channel discovery	Work Product
PHX_081	6/19/2009	Brian Hurh	Burt Braverman / David Silverman	Email re: Applicant's response to Speed Channel discovery w/ attached draft responses	Work Product
PHX_082	6/23/2009	Burt Braverman	Brian Hurh	Email re: Applicant's response to Speed Channel discovery w/ attached draft responses	Work Product
PHX_083	7/6/2009	Brian Hurh	Roger Williams	Email re: Phoenix response to Speed Channel discovery w/ attached unexecuted draft discovery responses	Work Product Atty/Client
PHX_084	7/6/2009	Brian Hurh	Burt Braverman	Email re: Phoenix response to Speed Channel discovery w/ attached draft responses	Work Product Atty/Client
PHX_085	7/10/2009	Roger Williams	Brian Hurh / Burt Braverman	Email re: Speed Channel	Atty/Client
PHX_086- PHX_088	7/13/2009	Brian Hurh	Roger Williams	Emails re: Applicant's response to Speed Channel discovery w/ attached draft responses	Work Product Atty/Client

To the extent necessary, Applicant and/or Applicant's counsel further asserts the attorney-client privilege, attorney work product, and any other applicable privilege over all information (including but not limited to materials in the nature of attorney research and unexecuted drafts of pleadings or other written materials) contained in counsel's files (whether in electronic form or otherwise) subject to such privilege.

Respectfully Submitted,



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Counsel for Phoenix 2008 LLC

Date: November 2, 2009

**CERTIFICATE OF SERVICE**

I do hereby certify that on the 2nd day of November, 2009, I caused a copy of the foregoing Log of Privileged Documents Withheld from Production by Phoenix 2008 LLC to be served by U.S. Mail, First Class, postage prepaid, upon:

Daniel E. Bruso, Esq.  
Cantor Colburn LLP  
20 Church Street, 22<sup>nd</sup> Floor  
Hartford, CT 06103-3207



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Brian J. Hurh

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Speed Channel, Inc.

Opposer,

v.

Phoenix 2008 LLC,

Applicant.

Opposition No. 91189418

Application Serial No. 77476098  
Filed May 15, 2008  
SPEEDVISION

Application Serial No. 77497086  
Filed June 12, 2008  
SPEEDVISION

Application Serial No. 77476107  
Filed May 15, 2008  
SPEEDVISION HD

Application Serial No. 77478035  
Filed May 19, 2008  
SPEEDVISION (and design)

**APPLICANT'S FIRST SUPPLEMENTAL RESPONSE TO OPPOSER'S  
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Applicant Phoenix 2008 LLC ("Applicant") hereby submits its First Supplemental Response to Opposer Speed Channel, Inc.'s ("Opposer") First Request for Production of Documents ("Requests"), originally served on June 4, 2009, pursuant to Fed. R. Civ. P. 26(e)(1) and the Trademark Trial and Appeal Board's ("Board") Manual of Procedure ("TBMP") § 408.03.<sup>1</sup>

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<sup>1</sup> The current available TBMP § 408.03 (v. 2004) cites to Fed. R. Civ. P. 26(e)(2). That rule was revised in 2007, and the duty to supplement is now set forth under Rule 26(e)(1). However, the revisions did not materially or substantively change the duty to supplement under the Federal Rules of Civil Procedure.



## **GENERAL OBJECTIONS**

Applicant objects to Opposer's Requests to the extent that such Requests are not relevant to the claims asserted in this proceeding, or not calculated to lead to the discovery of admissible evidence.

Applicant objects to Opposer's Requests to the extent that such Requests relate to matters that are protected by the attorney-client privilege, the attorney work product privilege, or any other applicable privilege.

Applicant objects to Opposer's Requests to the extent that such Requests, including their definitions and instructions, seek to impose any obligation on Applicant beyond that required by the Federal Rules of Civil Procedure or the United States Patent and Trademark Office.

In supplementing its responses to these Requests, Applicant does not waive any of the foregoing objections, or the specific objections set forth in the supplemental responses to particular Requests. By making these supplemental responses, Applicant does not concede that its supplemental responses are relevant to this action or calculated to lead to the discovery of admissible evidence. Applicant expressly reserves the right to object to further discovery into the subject matter of these Requests, to the introduction into evidence of any supplemental response or portion thereof, and to further supplement its responses should further investigation disclose responsive information.

Applicant incorporates by reference the foregoing General Objections into each of the supplemental responses below.

## **SPECIFIC OBJECTIONS AND RESPONSES**

### **REQUEST NO. 1:**

**All documents identified in response to Opposer's First Set of Interrogatories to Applicant served on June 4, 2009.**

#### **RESPONSE:**

Any document identified in response to any of Opposer's Interrogatories shall be disclosed to Opposer subject to any applicable objection or privilege.

### **REQUEST NO. 2:**

**All documents concerning the creation or adoption of Applicant's Marks including why and how Applicant's Marks were adopted.**

#### **RESPONSE:**

Applicant objects to Request No. 2 to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, this objection, Applicant has not identified any non-privileged documents responsive to this Request.

### **REQUEST NO. 3:**

**All documents concerning Applicant's use or proposed use of the word element SPEED, or any mark that includes in whole or in part the word element SPEED, other than Applicant's Marks, within the United States.**

#### **RESPONSE:**

Applicant objects to Request No. 3 on the ground that it is vague and ambiguous. It is not clear whether Opposer seeks "documents concerning ... any mark that includes in whole or in part the word element SPEED," or "documents concerning ... Applicant's use ... of ... any mark that includes in whole or in part the word element SPEED." Applicant further objects to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, this objection, non-privileged documents concerning Applicant's use or proposed use of SPEED consist of the Opposed Applications, which are already publicly available to Opposer.

#### **SUPPLEMENTAL RESPONSE**

Subject to, and without waiver of the foregoing objections, Applicant will produce certain documents responsive to this request.

Further, Applicant will produce for inspection certain additional documents that may be responsive to this request, which are subject to a claim of privilege and are identified in Applicant's privilege log, but only upon receipt of Opposer's express written agreement that it will not assert that the production and disclosure of these assertedly privileged documents and communications constitute a waiver by Applicant of the attorney-client, work product or any other privilege that may be claimed by Applicant with respect to any other document or communication whether or not related to the supplementally produced documents. Such production shall be pursuant to a binding protective order endorsed by Opposer and Opposer's counsel adequate to preserve the confidentiality of such documents.

#### **REQUEST NO. 4:**

**All documents that support the allegation made in the Opposed Applications that, at the time that Applicant filed the Opposed Applications, Applicant had a *bona fide* intent to use the mark identified in each of the Opposed Applications for each of the goods and services identified therein.**

#### **RESPONSE:**

Applicant objects to Request No. 4 to the extent that it seeks documents that are publicly available from the PTO. Applicant further objects to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, these objections, non-privileged documents responsive to this Request consist of the Opposed Applications, which were filed on an intent-to-use basis and are already publicly available to Opposer.

#### **SUPPLEMENTAL RESPONSE**

Applicant objects to Request No. 4 to the extent that it seeks production of highly confidential, commercially sensitive, proprietary and/or trade secret documents and things. Subject to, and without waiver of this objection or the foregoing objections, Applicant will produce for inspection certain documents and things responsive to this request.

Further, Applicant will produce certain documents and things responsive to this request, provided that such production shall be pursuant to a binding protective order endorsed by Opposer and Opposer's counsel adequate to preserve the confidentiality of such documents and things.

Further, Applicant will produce for inspection certain additional documents that may be responsive to this request, which are subject to a claim of privilege and are identified in Applicant's privilege log, but only upon receipt of Opposer's express written agreement that it will not assert that the production and disclosure of these assertedly privileged

documents and communications constitute a waiver by Applicant of the attorney-client, work product or any other privilege that may be claimed by Applicant with respect to any other document or communication whether or not related to the supplementally produced documents. Such production shall be pursuant to a binding protective order endorsed by Opposer and Opposer's counsel adequate to preserve the confidentiality of such documents.

In addition, Applicant will produce for inspection, in redacted form only, certain documents that contain highly confidential, commercially sensitive, proprietary and/or trade secret information subject to an appropriate protective order endorsed by Opposer and Opposer's counsel adequate to preserve the confidentiality of such documents.

**REQUEST NO. 5:**

**To the extent that you claim that third parties used the word element "SPEED" in connection with marks for goods in International Class 38,41, or either of them, or are otherwise intending to rely on any such third party marks, all documents concerning such third party marks including all research or investigations about such third party marks.**

**RESPONSE:**

Applicant objects to Request No. 5 to the extent that it seeks documents that are publicly available from the USPTO. Applicant further objects to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

**SUPPLEMENTAL RESPONSE**

Subject to, and without waiver of the foregoing objections, Applicant does not possess any non-privileged documents responsive to this Request.

**REQUEST NO. 6:**

**All documents concerning any investigation by Applicant regarding Speed or the sale of products or services under the Speed Marks, including without limitation where the products or services are sold or otherwise provided, the consumers of such products or services and the trade channels of such products or services.**

**RESPONSE:**

Applicant objects to Request No. 6 to the extent that it seeks documents that are publicly available from the USPTO. Applicant further objects to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, these objections, Applicant has not identified any non-privileged documents responsive to this Request.

## **SUPPLEMENTAL RESPONSE**

Applicant objects to Request No. 6 to the extent that it seeks production of highly confidential, commercially sensitive, proprietary and/or trade secret documents and things. Subject to, and without waiver of this objection or the foregoing objections, Applicant will produce certain documents responsive to this request.

In addition, Applicant will produce for inspection, in redacted form only, certain documents that contain highly confidential, commercially sensitive, proprietary and/or trade secret information subject to an appropriate protective order endorsed by Opposer and Opposer's counsel adequate to preserve the confidentiality of such documents.

### **REQUEST NO. 7:**

**All documents that identify the actual or intended trade channels for goods sold or services provided, or to be sold or provided, under Applicant's Marks within the United States.**

#### **RESPONSE:**

Applicant has not identified any documents responsive to this Request.

## **SUPPLEMENTAL RESPONSE**

Applicant objects to Request No. 7 to the extent that it seeks production of highly confidential, commercially sensitive, proprietary and/or trade secret documents and things. Subject to, and without waiver of this objection, Applicant will produce for inspection, in redacted form only, certain documents that contain highly confidential, commercially sensitive, proprietary and/or trade secret information subject to an appropriate protective order endorsed by Opposer and Opposer's counsel adequate to preserve the confidentiality of such documents.

### **REQUEST NO. 8:**

**All documents concerning the clearance of Applicant's Marks within the United States, including without limitation any legal opinions regarding Applicant's Marks, the Speed Marks, the Speedvision Mark, or any of them.**

#### **RESPONSE:**

Applicant objects to Request No. 8 to the extent that it seeks documents that are publicly available from the USPTO. Applicant further objects to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, this objection, Applicant has not identified any non-privileged documents responsive to this Request.

**REQUEST NO. 9:**

**All search reports obtained for or reviewed by or on behalf of Applicant in connection with adopting or clearing Applicant's Marks in the United States.**

**RESPONSE:**

Applicant has not identified any documents responsive to this Request.

**REQUEST NO. 10:**

**All documents concerning the meaning or commercial impression of Applicant's Marks within the United States.**

**RESPONSE:**

Applicant has not identified any documents responsive to this Request.

**SUPPLEMENTAL RESPONSE**

Applicant objects to Request No. 10 to the extent that it seeks production of highly confidential, commercially sensitive, proprietary and/or trade secret documents and things. Subject to, and without waiver of this objection, Applicant will produce for inspection, in redacted form only, certain documents that concern the meaning or commercial impression of the Speedvision mark as it was used by Speedvision Network, LLC, and that contain highly confidential, commercially sensitive, proprietary and/or trade secret information subject to an appropriate protective order endorsed by Opposer and Opposer's counsel adequate to preserve the confidentiality of such documents.

**REQUEST NO. 11:**

**All documents concerning any investigations of any marks done by or on behalf of Applicant in connection with clearing Applicant's Marks in the United States.**

**RESPONSE:**

Applicant objects to Request No. 11 to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

**SUPPLEMENTAL RESPONSE**

Subject to, and without waiver of the foregoing objection, Applicant does not possess any non-privileged documents responsive to this Request.

**REQUEST NO. 12:**

**All documents concerning the actual or planned advertising and marketing of the goods or services offered or to be offered under Applicant's Marks in the United States.**

**RESPONSE:**

Applicant has not identified any documents responsive to this Request.

**SUPPLEMENTAL RESPONSE**

Applicant objects to Request No. 12 to the extent that it seeks production of highly confidential, commercially sensitive, proprietary and/or trade secret documents and things. Subject to, and without waiver of this objection, Applicant will produce for inspection, in redacted form only, certain documents that contain highly confidential, commercially sensitive, proprietary and/or trade secret information subject to an appropriate protective order endorsed by Opposer and Opposer's counsel adequate to preserve the confidentiality of such documents.

**REQUEST NO. 13:**

**Representative samples of advertisements (regardless of media), signage, point of sale displays, catalogues, brochures, promotional materials and other marketing materials showing the manner in which Applicant has used or intends to use Applicant's Marks in the United States.**

**RESPONSE:**

Applicant has not identified any documents responsive to this Request.

**SUPPLEMENTAL RESPONSE**

Applicant objects to Request No. 13 to the extent that it seeks production of highly confidential, commercially sensitive, proprietary and/or trade secret documents and things. Subject to, and without waiver of this objection, Applicant will produce for inspection, in redacted form only, certain documents that contain highly confidential, commercially sensitive, proprietary and/or trade secret information subject to an appropriate protective order endorsed by Opposer and Opposer's counsel adequate to preserve the confidentiality of such documents.

**REQUEST NO. 14:**

**Representative samples of goods offered or sold, services offered or provided, or intended to be offered, sold or provided, under Applicant's Marks within the United States.**

**RESPONSE:**

Applicant has not identified any documents responsive to this Request.

**SUPPLEMENTAL RESPONSE**

Applicant objects to Request No. 14 to the extent that it seeks production of highly confidential, commercially sensitive, proprietary and/or trade secret documents and things. Subject to, and without waiver of this objection, Applicant will produce for inspection certain documents and things responsive to this request.

Further, Applicant will produce for inspection certain documents and things responsive to this request, provided that such production shall be pursuant to a binding protective order endorsed by Opposer and Opposer's counsel adequate to preserve the confidentiality of such documents and things.

**REQUEST NO. 15:**

**Documents sufficient to show the goods on or services in connection with Applicant actually uses, or intends to use, Applicant's Marks in the United States.**

**RESPONSE:**

Applicant objects to Request No. 15 to the extent that it seeks documents that are publicly available from the USPTO. Applicant further objects to the extent that that the request for documents sufficient to show goods or services "in connection with Applicant actually uses, or intends to use..." is incomprehensible. Subject to, and without waiver of, this objection, documents responsive to this Request consist of the Opposed Applications, which are already publicly available to Opposer.

**SUPPLEMENTAL RESPONSE**

Applicant objects to Request No. 15 to the extent that it seeks production of highly confidential, commercially sensitive, proprietary and/or trade secret documents and things. Applicant further objects to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of these objections or the foregoing objections, Applicant will produce for inspection certain documents and things responsive to this request.

Further, Applicant will produce for inspection certain documents and things responsive to this request, provided that such production shall be pursuant to a binding protective order endorsed by Opposer and Opposer's counsel adequate to preserve the confidentiality of such documents and things.



Further, Applicant will produce for inspection certain additional documents that may be responsive to this request, which are subject to a claim of privilege and are identified in Applicant's privilege log, but only upon receipt of Opposer's express written agreement that it will not assert that the production and disclosure of these assertedly privileged documents and communications constitute a waiver by Applicant of the attorney-client, work product or any other privilege that may be claimed by Applicant with respect to any other document or communication whether or not related to the supplementally produced documents. Such production shall be pursuant to a binding protective order endorsed by Opposer and Opposer's counsel adequate to preserve the confidentiality of such documents.

**REQUEST NO. 16:**

**Documents sufficient to show the dates of first use of Applicant's Marks in the United States,**

**RESPONSE:**

Applicant has not identified any documents responsive to this Request.

**REQUEST NO. 17:**

**Documents sufficient to show how Applicant's Marks are, or will be, actually used in commerce in the United States and the dates of first use.**

**RESPONSE:**

Applicant objects to Request No. 17 to the extent that it seeks documents that are publicly available from the USPTO. Subject to, and without waiver of, this objection, documents responsive to this Request consist of the Opposed Applications, which are already publicly available to Opposer.

**SUPPLEMENTAL RESPONSE**

Applicant objects to Request No. 17 to the extent that it seeks production of highly confidential, commercially sensitive, proprietary and/or trade secret documents and things. Subject to, and without waiver of this objections or the foregoing objection, Applicant will produce for inspection certain documents and things responsive to this request, provided that such production shall be pursuant to a binding protective order endorsed by Opposer and Opposer's counsel adequate to preserve the confidentiality of such documents and things.

In addition, Applicant will produce for inspection, in redacted form only, certain documents that contain highly confidential, commercially sensitive, proprietary and/or

trade secret information subject to an appropriate protective order endorsed by Opposer and Opposer's counsel adequate to preserve the confidentiality of such documents.

**REQUEST NO. 18:**

**All Documents concerning Applicant's business plans for offering goods or providing services under Applicant's Marks or any other name or mark that includes the word element SPEED within the United States.**

**RESPONSE:**

Applicant has not identified any documents responsive to this Request.

**SUPPLEMENTAL RESPONSE**

Applicant objects to Request No. 18 to the extent that it seeks production of highly confidential, commercially sensitive, proprietary and/or trade secret documents and things. Subject to, and without waiver of this objection, Applicant will produce for inspection, in redacted form only, certain documents that contain highly confidential, commercially sensitive, proprietary and/or trade secret information subject to an appropriate protective order endorsed by Opposer and Opposer's counsel adequate to preserve the confidentiality of such documents.

**REQUEST NO. 19:**

**All documents concerning any plans to expand the goods offered the services provided under Applicant's Marks beyond those identified in the Opposed Applications, within the United States.**

**RESPONSE:**

Applicant has not identified any documents responsive to this Request.

**REQUEST NO. 20:**

**Press releases, press kits, or news clippings concerning Applicant.**

**RESPONSE:**

Applicant has not identified any documents responsive to this Request.

**REQUEST NO. 21:**

**All documents concerning Agreements, including any drafts, whether or not currently in force, and negotiations with any person or entity concerning Applicant's Marks in the United States.**

**RESPONSE:**

Applicant objects to Request No. 21 on the ground that it is vague and ambiguous to the extent that the term "Agreements" is not defined. Applicant further objects to the extent that the request seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, this objection, Applicant has not identified any non-privileged documents responsive to this Request.

**REQUEST NO. 22:**

**All documents concerning any agreements, whether or not they are currently in force, including documents relating to the use or intended use of Applicant's Marks in the United States.**

**RESPONSE:**

Applicant objects to Request No. 22 to the extent that it is duplicative of Request No. 21. Applicant further objects to the extent that the request seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, this objection, Applicant has not identified any non-privileged documents responsive to this Request.

**REQUEST NO. 23:**

**All documents concerning market research whether conducted for marketing purposes, litigation purposes, or other purposes, which relates or refers to Applicant, Applicant's Marks, Speed, the Speed Marks, the Speedvision Mark, or any of the foregoing.**

**RESPONSE:**

Applicant objects to Request No. 23 to the extent that it is overbroad and unduly burdensome. Applicant further objects to the extent that the request seeks documents that are not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to the extent that the request seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

**SUPPLEMENTAL RESPONSE**

Applicant objects to Request No. 23 to the extent that it seeks production of highly confidential, commercially sensitive, proprietary and/or trade secret documents and things. Subject to, and without waiving this objection or the foregoing objections, Applicant will produce for inspection, in redacted form only, certain documents that contain highly confidential, commercially sensitive, proprietary and/or trade secret

information subject to an appropriate protective order endorsed by Opposer and Opposer's counsel adequate to preserve the confidentiality of such documents.

**REOUEST NO. 24:**

**All documents concerning investigations into the nature of Speed's use of the Speed Marks, the Speedvision Mark, or any of the foregoing, in the United States.**

**RESPONSE:**

Applicant objects to Request No. 24 to the extent that it seeks documents that are publicly available from the USPTO. Applicant further objects to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, these objections, Applicant has not identified any non-privileged documents responsive to this Request.

**SUPPLEMENTAL RESPONSE**

Applicant objects to Request No. 24 to the extent that it seeks production of highly confidential, commercially sensitive, proprietary and/or trade secret documents and things. Subject to, and without waiving this objection or the foregoing objections, Applicant will produce certain documents responsive to this request.

In addition, Applicant will produce for inspection, in redacted form only, certain documents that contain highly confidential, commercially sensitive, proprietary and/or trade secret information subject to an appropriate protective order endorsed by Opposer and Opposer's counsel adequate to preserve the confidentiality of such documents.

**REQUEST NO. 25:**

**All documents referring to, relating to, or concerning the Speed Mark, products sold and services provided, other than the pleadings in this opposition proceeding or communications and correspondence between counsel for the parties in this proceeding.**

**RESPONSE:**

Applicant objects to Request No. 25 to the extent that it is overbroad and unduly burdensome. Applicant further objects to the extent that the request seeks documents that are not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to the extent that the request seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

**SUPPLEMENTAL RESPONSE**

Applicant objects to Request No. 25 to the extent that it seeks production of highly confidential, commercially sensitive, proprietary and/or trade secret documents and things. Subject to, and without waiving this objection or the foregoing objections, Applicant will produce certain documents responsive to this request.

In addition, Applicant will produce for inspection, in redacted form only, certain documents that contain highly confidential, commercially sensitive, proprietary and/or trade secret information subject to an appropriate protective order endorsed by Opposer and Opposer's counsel adequate to preserve the confidentiality of such documents.

**REQUEST NO. 26:**

**All documents referring to, relating to, or concerning Applicant's Marks, products sold, or to be sold, services provided, or to be provided, thereunder, other than the pleadings in this opposition proceeding or communications and correspondence between counsel for the parties in this proceeding.**

**RESPONSE:**

Applicant objects to Request No. 26 to the extent that it is overbroad and unduly burdensome. Applicant further objects to the extent that the request seeks documents that are not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to the extent that the request seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

**SUPPLEMENTAL RESPONSE**

Applicant objects to Request No. 26 to the extent that it seeks production of highly confidential, commercially sensitive, proprietary and/or trade secret documents and things. Subject to, and without waiver of this objection or the foregoing objections, Applicant will produce for inspection certain documents and things responsive to this request.

Further, Applicant will produce for inspection certain documents and things responsive to this request, provided that such production shall be pursuant to a binding protective order endorsed by Opposer and Opposer's counsel adequate to preserve the confidentiality of such documents and things.

Further, Applicant will produce for inspection certain additional documents that may be responsive to this request, which are subject to a claim of privilege and are identified in Applicant's privilege log, but only upon receipt of Opposer's express written agreement that it will not assert that the production and disclosure of these assertedly privileged documents and communications constitute a waiver by Applicant of the attorney-client, work product or any other privilege that may be claimed by Applicant with respect to any other document or communication whether or not related to the supplementally produced

documents. Such production shall be pursuant to a binding protective order endorsed by Opposer and Opposer's counsel adequate to preserve the confidentiality of such documents.

In addition, Applicant will produce for inspection, in redacted form only, certain documents that contain highly confidential, commercially sensitive, proprietary and/or trade secret information subject to an appropriate protective order endorsed by Opposer and Opposer's counsel adequate to preserve the confidentiality of such documents.

**REQUEST NO. 27:**

**All documents in Applicant's possession regarding Speed, the Speed Marks, the Speedvision Mark, or any of them, including documents relating to Applicant's first awareness of Speed, the Speed Marks, the Speedvision Mark, or any of them.**

**RESPONSE:**

Applicant objects to Request No. 27 to the extent that it is overbroad and unduly burdensome. Applicant further objects to the extent that the request seeks documents that are not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to the extent that the request seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

**SUPPLEMENTAL RESPONSE**

Applicant objects to Request No. 27 to the extent that it seeks production of highly confidential, commercially sensitive, proprietary and/or trade secret documents and things. Subject to, and without waiving this objection or the foregoing objections, Applicant will produce certain documents responsive to this request.

In addition, Applicant will produce for inspection, in redacted form only, certain documents that contain highly confidential, commercially sensitive, proprietary and/or trade secret information subject to an appropriate protective order endorsed by Opposer and Opposer's counsel adequate to preserve the confidentiality of such documents.

**REQUEST NO. 28:**

**Documents sufficient to show Applicant's total actual or planned expenditures to advertise, market or promote the goods or services offered under Applicant's Marks within the United States.**

**RESPONSE:**

Applicant has not identified any documents responsive to this Request.

## **SUPPLEMENTAL RESPONSE**

Applicant objects to Request No. 28 to the extent that it seeks production of highly confidential, commercially sensitive, proprietary and/or trade secret documents and things. Subject to, and without waiver of this objection, Applicant will produce for inspection, in redacted form only, certain documents that contain highly confidential, commercially sensitive, proprietary and/or trade secret information subject to an appropriate protective order endorsed by Opposer and Opposer's counsel adequate to preserve the confidentiality of such documents.

### **REQUEST NO. 29:**

**Documents sufficient to show Applicant's total sales under Applicant's Marks, Applicant's anticipated sales under Applicant's Marks, or both, within the United States.**

### **RESPONSE:**

Applicant has not identified any documents responsive to this Request.

## **SUPPLEMENTAL RESPONSE**

Applicant objects to Request No. 29 to the extent that it seeks production of highly confidential, commercially sensitive, proprietary and/or trade secret documents and things. Subject to, and without waiver of this objection, Applicant will produce for inspection, in redacted form only, certain documents that contain highly confidential, commercially sensitive, proprietary and/or trade secret information subject to an appropriate protective order endorsed by Opposer and Opposer's counsel adequate to preserve the confidentiality of such documents.

### **REQUEST NO. 30:**

**All Documents evidencing financial projections, budgets, marketing or advertising forecasts or projections related to Applicant's use or planned use of Applicant's Marks in the United States.**

### **RESPONSE:**

Applicant has not identified any documents responsive to this Request.

## **SUPPLEMENTAL RESPONSE**

Applicant objects to Request No. 30 to the extent that it seeks production of highly confidential, commercially sensitive, proprietary and/or trade secret documents and things. Subject to, and without waiver of this objection, Applicant will produce for

inspection, in redacted form only, certain documents that contain highly confidential, commercially sensitive, proprietary and/or trade secret information subject to an appropriate protective order endorsed by Opposer and Opposer's counsel adequate to preserve the confidentiality of such documents.

**REQUEST NO. 31:**

**All documents that support or contravene Applicant's denial of any allegation set forth in Opposer's Notice of Opposition, including the specific allegation(s) to which the documents relate.**

**RESPONSE:**

Applicant objects to Request No. 31 to the extent that it seeks documents that are publicly available from the USPTO. Applicant further objects to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

**SUPPLEMENTAL RESPONSE**

Applicant objects to Request No. 31 to the extent that it seeks production of highly confidential, commercially sensitive, proprietary and/or trade secret documents and things. Subject to, and without waiver of this objection or the foregoing objections, Applicant will produce certain documents responsive to this request.

In addition, Applicant will produce for inspection, in redacted form only, certain documents that contain highly confidential, commercially sensitive, proprietary and/or trade secret information subject to an appropriate protective order endorsed by Opposer and Opposer's counsel adequate to preserve the confidentiality of such documents.

**REQUEST NO. 32:**

**All documents that support or contravene Applicant's Affirmative Defenses, including the specific Affirmative Defense(s) to which the documents relate.**

**RESPONSE:**

Applicant objects to Request No. 32 to the extent that it seeks documents that are publicly available from the USPTO. Applicant further objects to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

**SUPPLEMENTAL RESPONSE**

Applicant objects to Request No. 32 to the extent that it seeks production of highly confidential, commercially sensitive, proprietary and/or trade secret documents and



things. Subject to, and without waiver of this objection or the foregoing objections, Applicant will produce certain documents responsive to this request.

In addition, Applicant will produce for inspection, in redacted form only, certain documents that contain highly confidential, commercially sensitive, proprietary and/or trade secret information subject to an appropriate protective order endorsed by Opposer and Opposer's counsel adequate to preserve the confidentiality of such documents.

**REQUEST NO. 33:**

**All documents that Applicant intends to introduce during its trial testimony.**

**RESPONSE:**

Applicant has not completed its investigation of this matter, and, therefore, has not yet identified which documents it intends to introduce during its trial testimony.

**SUPPLEMENTAL RESPONSE**

Applicant has not yet completed its investigation of this matter, and, therefore, has not yet identified which documents it intends to introduce during its trial testimony.

**REQUEST NO. 34:**

**All documents concerning any instructions by Applicant to preserve electronically stored information.**

**RESPONSE:**

Applicant has not identified any documents responsive to this Request.

**REQUEST NO. 35:**

**Documents sufficient to show Applicant's document retention and document destruction policies.**

**RESPONSE:**

Applicant has not identified any documents responsive to this Request.

**REQUEST NO. 36:**

**All documents identified in Applicant's Initial Disclosures.**

**RESPONSE:**

Applicant has disclosed all relevant and non-privileged documents that it has identified to be responsive to Opposer's Document Requests and Interrogatories.

**REQUEST NO. 37:**

**Drafts of all documents responsive to any of the foregoing Requests.**

**RESPONSE:**

Applicant objects to Request No. 37 to the extent that it is overbroad and unduly burdensome. Applicant further objects to the extent that the request seeks documents that are not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to the extent that the request seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

**SUPPLEMENTAL RESPONSE**

Applicant objects to Request No. 37 to the extent that it seeks production of highly confidential, commercially sensitive, proprietary and/or trade secret documents and things. Subject to, and without waiving this objection or the foregoing objections, Applicant will produce for inspection, in redacted form only, certain documents that contain highly confidential, commercially sensitive, proprietary and/or trade secret information subject to an appropriate protective order endorsed by Opposer and Opposer's counsel adequate to preserve the confidentiality of such documents.

**REQUEST NO. 38:**

**Applicant's current organizational chart.**

**RESPONSE:**

Applicant objects to Request No. 38 to the extent that it seeks documents that are not relevant to the issues in this proceeding or reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiver of, this objection, Applicant has not identified any documents responsive to this Request.

**REQUEST NO. 39:**

**Documents sufficient to identify each of Applicant's officers, managers and members.**

**RESPONSE:**

Applicant objects to Request No. 39 to the extent that it seeks documents that are not relevant to the issues in this proceeding or reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiver of, this objection, Applicant has not identified any documents responsive to this Request.

**REQUEST NO. 40:**

**All documents related to Speedvision Network LLC.**

**RESPONSE:**

Applicant objects to Request No. 40 to the extent that it is overbroad and unduly burdensome. Applicant further objects to the extent that the request seeks documents that are not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to the extent that the request seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

**SUPPLEMENTAL RESPONSE**

Applicant objects to Request No. 40 to the extent that it seeks production of highly confidential, commercially sensitive, proprietary and/or trade secret documents and things. Subject to, and without waiving this objection or the foregoing objections, Applicant will produce certain documents responsive to this request.

In addition, Applicant will produce for inspection, in redacted form only, certain documents that contain highly confidential, commercially sensitive, proprietary and/or trade secret information subject to an appropriate protective order endorsed by Opposer and Opposer's counsel adequate to preserve the confidentiality of such documents.

**REQUEST NO. 41:**

**All documents and things related to any use of the Speedvision Mark within the United States to refer to Speed by any person or entity.**

**RESPONSE:**

Applicant has not identified any documents responsive to this Request.

**REQUEST NO. 42:**

**All documents and things related to consumers association of the Speedvision Mark with Speed, Speed's products, Speed's services, or any of the foregoing.**

**RESPONSE:**

Applicant objects to Request No. 42 to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, this objection, Applicant has not identified any non-privileged documents responsive to this Request.

**REQUEST NO. 43:**

**All documents and things related to consumers referring to Speed as Speedvision from December 4, 2004, through and including the date that Applicant responds to these Requests.**

**RESPONSE:**

Applicant objects to Request No. 43 to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, this objection, Applicant has not identified any non-privileged documents responsive to this Request.

**REQUEST NO. 44:**

**All documents and things prepared by or for Applicant that relate to consumers' association, or lack of association, of Speed with the Speedvision Mark.**

**RESPONSE:**

Applicant objects to Request No. 44 to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, this objection, Applicant has not identified any non-privileged documents responsive to this Request.

**REQUEST NO. 45:**

**All documents and things prepared by or for Applicant that relate to Speed's rights in the Speedvision Mark.**

**RESPONSE:**

Applicant objects to Request No. 45 to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, this objection, Applicant has not identified any non-privileged documents responsive to this Request.

## **SUPPLEMENTAL RESPONSE**

Applicant objects to Request No. 45 to the extent that it seeks production of highly confidential, commercially sensitive, proprietary and/or trade secret documents and things. Subject to, and without waiving this objection or the foregoing objection, Applicant will produce certain documents demonstrating that Speed has no rights in the Speedvision Mark.

In addition, Applicant will produce for inspection, in redacted form only, certain documents that contain highly confidential, commercially sensitive, proprietary and/or trade secret information subject to an appropriate protective order endorsed by Opposer and Opposer's counsel adequate to preserve the confidentiality of such documents.

### **REQUEST NO. 46:**

**All documents and things related to consumers association of the Speed Marks with Speed, Speed's products, Speed's services, or any of the foregoing.**

#### **RESPONSE:**

Applicant objects to Request No. 46 to the extent that it seeks documents that are not relevant to the issues in this proceeding or reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

## **SUPPLEMENTAL RESPONSE**

Subject to, and without waiving the foregoing objections, Applicant does not possess any non-privileged documents responsive to this Request.

### **REQUEST NO. 47:**

**All documents and things related to consumers referring to Speed using the Speed Marks.**

#### **RESPONSE:**

Applicant objects to Request No. 47 to the extent that it seeks documents that are not relevant to the issues in this proceeding or reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

## **SUPPLEMENTAL RESPONSE**

Subject to, and without waiving the foregoing objections, Applicant does not possess any non-privileged documents responsive to this Request.

**REQUEST NO. 48:**

**All documents and things prepared by or for Applicant that relate to consumers' association, or lack of association, of Speed with the Speed Marks.**

**RESPONSE:**

Applicant objects to Request No. 48 to the extent that it seeks documents that are not relevant to the issues in this proceeding or reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

**SUPPLEMENTAL RESPONSE**

Subject to, and without waiving the foregoing objections, Applicant does not possess any non-privileged documents responsive to this Request.

**REQUEST NO. 49:**

**All documents and things prepared by or for Applicant that relate to Speed's rights in the Speed Marks.**

**RESPONSE:**

Applicant objects to Request No. 49 to the extent that it seeks documents that are not relevant to the issues in this proceeding or reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine.

**SUPPLEMENTAL RESPONSE**

Subject to, and without waiving the foregoing objections, Applicant will produce certain documents responsive to this request.

**REQUEST NO. 49\*:<sup>2</sup>**

**All documents and things that support or contravene Applicant's denial of Speed's claim that Applicant's Mark is confusingly similar to the Speed Marks, the Speedvision Marks, or any of them.**

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<sup>2</sup> Opposer's First Set of Document Requests includes two requests entitled "Request No. 49." To the extent that Applicant makes any reference to one of these requests, Applicant will refer to the second request as Request No. 49\*, as indicated above.

**RESPONSE:**

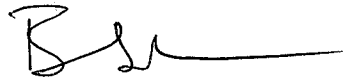
Applicant objects to Request No. 49\* to the extent that it seeks documents protected by the attorney-client privilege and/or the attorney work-product doctrine. Subject to, and without waiver of, this objection, Oppose is already in possession of Applicant's April 3, 2009 letter to Daniel E. Bruso, Esq., counsel for Opposer, in response to Opposer's March 25, 2009 letter to Brian J. Hurh, Esq., counsel for Applicant.

**SUPPLEMENTAL RESPONSE**

Applicant objects to Request No. 49\* to the extent that it seeks production of highly confidential, commercially sensitive, proprietary and/or trade secret documents and things. Subject to, and without waiving this objection or the foregoing objection, Applicant will produce certain documents responsive to this request.

In addition, Applicant will produce for inspection, in redacted form only, certain documents that contain highly confidential, commercially sensitive, proprietary and/or trade secret information subject to an appropriate protective order endorsed by Opposer and Opposer's counsel adequate to preserve the confidentiality of such documents.

Respectfully Submitted,

By:   
Brian J. Hurh

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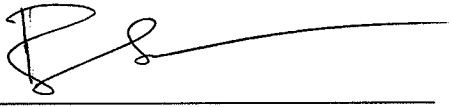
November 2, 2009



**CERTIFICATE OF SERVICE**

I do hereby certify that a copy of the foregoing "Applicant's First Supplemental Response to Opposer's First Set of Document Requests" was sent via first class mail, postage prepaid, this 2nd day of November, 2009 to the following:

Daniel E. Bruso, Esq.  
Cantor Colburn LLP  
20 Church Street, 22<sup>nd</sup> Floor  
Hartford, CT 06103-3207



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